

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

CML-NV RAINBOW SQUARE, LLC,

Plaintiff,

v.

LAEDWEN LLC, et al.,

Defendants.

2:11-CV-229 JCM (CWH)

ORDER

Presently before the court is plaintiff CML-NV Rainbow Square, LLC's motion for default judgment. (Doc. #15). On May 12, 2011, the clerk entered default as to Laedwen, LLC. (Doc. #12).

Plaintiff seeks default judgment against defendant Laedwen, LLC in the amount of \$5,510,312.27 and interest accruing from the date of entry of the default judgment. This amount includes actual damages, attorney's fees, and costs. (Doc. #15).

However, before analyzing the motion for default judgment, the court first must determine whether it has subject-matter jurisdiction over this action. Federal courts are courts of limited jurisdiction, and "[t]hey possess only that power authorized by Constitution and statute." *United States v. Marks*, 530 F.3d 799, 810 (9th Cir. 2008) (quoting *Kokkonen v. Guardian Life Ins. Co.*, 511 U.S. 375, 377 (1994)).

Federal courts are "presumed to lack jurisdiction . . . unless the contrary affirmatively appears." *Stock West, Inc. v. Confederated Tribes*, 873 F.2d 1221, 1225 (9th Cir. 1989). Thus, the party asserting diversity jurisdiction bears the burden of proof. *Lew v. Moss*, 797 F.2d 747, 750 (9th

1 Cir. 1986). Pursuant to Federal Rule of Civil Procedure 12(h)(3), “if the court determines at any
2 time that it lacks subject-matter jurisdiction, the court must dismiss the action.”

3 Plaintiff asserts that this court has subject-matter jurisdiction pursuant to 28 U.S.C. § 1332.
4 Plaintiff is a limited liability company wholly owned by Multibank 2009-1 RES-ADC Venture, LLC
5 (“Multibank”). (Doc. #15). The Federal Deposit Insurance Corporation (the “FDIC”) owns a
6 majority share of Multibank. (Docs. #1 and #15).

7 The motion for default recognizes that this court has dismissed several other similar cases
8 for lack of subject-matter jurisdiction due to the involvement of the FDIC. (Doc. #15, citing *RES-NV*
9 *TVL, LLC v. Towne Vistas, LLC, et. al.*, 2:10-cv-1084-JCM-PAL; *RES-NV APC, LLC v. Astoria*
10 *Pearl Creel, LLC, et. al.*, 2:11-cv-00381-LDG-RJJ). These cases present similar fact patterns and
11 similar parties to the case currently before the court. In both of those cases, the court held that it
12 lacked subject-matter jurisdiction because the FDIC’s status as a federally chartered bank destroys
13 diversity citizenship.

14 Plaintiff points out that reconsideration motions have been filed in each of the above-
15 referenced cases, and states that it believes that “after reviewing the motions in the parallel cases,
16 the [c]ourt will determine that it does in fact have subject matter jurisdiction over those actions, and
17 has subject matter jurisdiction in this case, as well.” (Doc. #15). On December 30, 2011, this court
18 ruled on the reconsideration motion in *RES-NV TVL, LLC v. Towne Vistas, LLC, et. al.*, 2:10-cv-
19 1084-JCM-PAL. The court held that “it is apparent that the FDIC is a member of Multibank; thus
20 diversity jurisdiction is destroyed.” *Id.* at doc. #79. Accordingly, this court was not convinced by
21 the reconsideration arguments.

22 Similar to the court’s finding in *RES-NV TVL, LLC v. Towne Vistas, LLC, et. al.*, 2:10-cv-
23 1084-JCM-PAL, the court finds that it lacks subject-matter jurisdiction in the case at bar. The
24 involvement of the FDIC precludes the court from exercising diversity jurisdiction.


25 As this court stated in its reconsideration order in *RES-NV TVL, LLC v. Towne Vistas, LLC,*
26 *et. al.*, 2:10-cv-1084-JCM-PAL, “this court is guided by current precedent and applies the law as it
27 interprets it. Overturning precedent and setting policy falls within the sound discretion of the Ninth
28

1 Circuit.” *Id.* at Doc. #79.

2 Accordingly,

3 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the case of *CML-NV*
4 *Rainbow Square, LLC v. Marretti, et. al.*, 2:11-cv-00229-JCM-CWH be, and the same hereby is,
5 DISMISSED for lack of subject-matter jurisdiction.

6 DATED January 30, 2012.

7
8 
9

UNITED STATES DISTRICT JUDGE
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28